

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH PUCKETT,) 1:05cv0277 REC DLB
v.)
Plaintiff,) FINDINGS AND RECOMMENDATION
v.) REGARDING DISMISSAL OF ACTION
CHIEF OF POLICE DYER,)
OFFICER VAN HALEN,)
Defendants.)

Plaintiff, appearing pro se and proceeding in forma pauperis, filed the instant complaint pursuant to 42 U.S.C. § 1983 on February 24, 2005.

On April 1, 2005, the Court issued an order finding that service of the complaint was appropriate for Defendants Fresno Chief of Police Dyer and Fresno Police Officer Van Halen. Plaintiff was directed to complete and return service documents, including two USM-285 forms, within thirty (30) days of the date of the order. Plaintiff was warned that failure to do so would result in a recommendation that the action be dismissed. To date, Plaintiff has not complied with the order.

DISCUSSION

Local Rule 11-110 provides that “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of the Court.” District courts have the inherent

1 power to control their dockets and “in the exercise of that power, they may impose sanctions
2 including, where appropriate . . . dismissal of a case.” Thompson v. Housing Auth., 782 F.2d
3 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s
4 failure to prosecute an action, failure to obey a court order, or failure to comply with local rules.
5 See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for noncompliance with
6 local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to
7 comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-
8 41 (9th Cir. 1988)(dismissal for failure to comply with local rule requiring pro se plaintiffs to
9 keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir.
10 1987)(dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421,
11 1424 (9th Cir. 1986)(dismissal for failure to lack of prosecution and failure to comply with local
12 rules).

13 In determining whether to dismiss an action for lack of prosecution, failure to obey a
14 court order, or failure to comply with local rules, the court must consider several factors: (1) the
15 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket;
16 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
17 their merits; and (5) the availability of less drastic alternatives. Thompson, 782 F.2d at 831;
18 Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali,
19 46 F.3d at 53.

20 In the instant case, the Court finds that the public’s interest in expeditiously resolving this
21 litigation and the court’s interest in managing the docket weigh in favor of dismissal, as this case
22 has been pending since February 2005. The third factor, risk of prejudice to defendants, also
23 weighs in favor of dismissal, since a presumption of injury arises from the occurrence of
24 unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir.
25 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
26 outweighed by the factors in favor of dismissal discussed herein. Finally, a court’s warning to a
27 party that his failure to obey the court’s order will result in dismissal satisfies the “consideration
28 of alternatives” requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;

Henderson, 779 F.2d at 1424. The court’s order directing Plaintiff to return service documents expressly stated: “The failure to comply with this Order will result in a Recommendation that this action be dismissed.” Thus, Plaintiff had adequate warning that dismissal would result from noncompliance with the Court’s order.

RECOMMENDATION

Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based on Plaintiff's failure to obey the Court's April 1, 2005, order and for failure to prosecute this action.

These Findings and Recommendations are submitted to the Honorable Robert E. Coyle pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: May 9, 2005
3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE